IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Chamber Summons No. 1456 of 2007
in
Suit No. 678 of 2004

Ajit Jayant Pathare ..Plaintiff

vs.

Hema Vijay Pathare & Ors. ..Defendants

Ms.Surve i/b Mr.LeRoy Collaco for plaintiff.
Mr.S.A.Bhagwat for defendant nos.1 to 12.
Mr.K.V.Tembe for defendant no.13.

CORAM: S.C.DHARMADHIKARI J
10th October,2007

P.C.

1. This is a chamber summons for amendment of the plaint.

2. The original plaintiff has instituted this suit but later on he expired and his heir is prosecuting the same.

3. The chamber summons is moved by the heir for amendment of the plaint. In his submission, the amendments which are now sought to be made are only to highlight the pleas already raised in the plaint and to elaborate them further. There is no question of any alternation in the cause of action or structure of the suit. It is his case that

deceased was critically ill prior to his death and, therefore, all documents could not be placed on record before this Court. It is contended that these documents are now available and based upon the contents thereof some pleas are incorporated with additional reliefs.

4. The defendants have opposed this chamber summons by filing the reply. Their contention is that the chamber summons is not maintainable in as much as the affidavit in support does not set out why the same is moved. Their second submission is that the chamber summons may not be granted because all facts which are necessary to be set out are already set out by the original plaintiff. There is no question of the pleas now being elaborated. Lastly, the relief sought to be incorporated by inserting prayer clause a(i) would change the nature of the suit from the one already instituted. The plaint proceeds on the basis that 50% share in the property is that of the defendants. Once that is admitted position and the plaintiff claims only 50% share, then, he cannot be allowed to incorporate the prayer whereby the entire property is now sought to be claimed.

5. None of the above submissions are worthy of

acceptance. It is well settled principle that by amendment neither relief is being granted nor there is question of anybody being estopped from opposing the merits of the amendment. Merely because certain pleas are allowed to be incorporated or the one already raised are sought to be elaborated, does not mean that the Court is obliged to grant the relief. By incorporating all these pleas all that the plaintiff states is that he is entitled to prayers in the plaint. The defendants are not estopped from opposing this request in as much as they can always file additional written statement and deny the contentions so also raise appropriate pleas which would enable them to urge finally that this Court cannot grant reliefs as prayed for. All such remedies are always in tact and are never affected by the order granting amendment. Merely because chamber summons does not state that amendment is not going to alter the structure of the suit does not mean that the Court cannot consider the request for amendment. It is for the Court to decide as to whether the amendment would alter the structure of the suit or not and merely because the party does not say so in the application for amendment and affidavit in support does not mean that satisfaction of the Court is unnecessary or that it will not apply its mind and

arrive at such finding independently. In such circumstances, there is no merit in either pleas. Chamber Summons does not appear to be so belated as to defeat the plaintiffs' cause.

6. In these circumstances, chamber summons is made absolute in terms of prayer clause (a). Amendment to be carried out within a period of two weeks. Copy of the amended plaint be served within two weeks thereafter. Written statement/additional written statement to be filed within a period of six weeks from the receipt of amended plaint. No order as to costs.

7. All pleas and contentions on merits of the controversy of all parties to the suit are expressly kept open.

(S.C.DHARMADHIKARI J.)